

REMARKS

Claims 1-20 and 22-26 are currently pending in the present application. No amendments to the claims are made by way of the present submission. Thus, no new matter has been added.

Interview Summary

Applicants appreciate the courtesies extended by the Examiner during the telephone interviews conducted on April 10 and 20, 2009. During the interviews, the Examiner made clear that since the previously filed amendments filed on March 18, 2009 was not entered, even if the supplemental reply is filed along with RCE, the first action after a RCE will not be final.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. §§102(b) and 103(a)

The Examiner has rejected claims 1-5, 7, 9-10, 12-20 and 23-25 under 35 U.S.C. §102(b) as being anticipated by Vogt et al. (U.S. Patent 6,274,570). Also, the Examiner has rejected claims 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Vogt. Also, the Examiner has rejected claims 6, 8, 11 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Vogt in view of Flahive USP 5,965,487. Applicants respectfully traverse these rejections.

Claim 1 of the present invention is directed to a microemulsion composition, comprising matalaxyl-M as active ingredient; emulsifier which essentially comprises polyoxyalkylene tristyrylphenyl ether, and further comprises one or more selected from the group consisting of calcium salt of alkylbenzene sulfonic acid and sodium salt of dialkyl succinic acid; one or more aqueous solvents selected from the group consisting of lower alcohol, glycol, glycol ether, lactone, pyrrolidone, amine and amide; and water, wherein the content of water is 5 to 50 weight %. The present invention is characterized in using aqueous solvent as well as 5 to 50 weight % of water to provide an environmentally-friendly and stable microemulsion.

The present invention is patentably distinct from the Vogt reference for at least the following reasons:

First, the present invention utilizes only an aqueous solvent, whereas Vogt uses a water-immiscible solvent (Examples 2, 7 and 8 of Vogt) or mixtures of water-miscible and water-immiscible solvents (see Examples 1 and 3-6 of Vogt). There is no single working example for a composition that contains a water-miscible solvent.

Second, the Examiner indicated that Vogt also discloses that the composition can be diluted with water to obtain an emulsion or microemulsion composition (see column 6, lines 20-25 and claims 36 and 39 of Vogt). However, the above-mentioned "water" is not a solvent for dissolving pesticides. The finished product of emulsion concentrate composition of Vogt does not contain water (see Examples 1-8). In contrast, the microemulsion of the present invention employs water as a solvent for dissolving metalaxyl-M. The above-mentioned "water" in Vogt is used for diluting the emulsion concentrate composition right before application (see column 4, lines 58-62 of Vogt). The microemulsion of the present invention is also diluted with water before application (see paragraph [39] of the present PCT publication). Applicants respectfully submit that water, which is used in the diluting process, should not be considered as a technical construction.

Third, the present invention utilizes a combination of polyoxyalkylene tristyrylphenyl ether and calcium salt of alkylbenzene sulfonic acid or sodium salt dialkyl succinic acid as an emulsifier. In contrast, Vogt uses a combination of (a) a castor oil ethoxylate, (b) a branched C₈-C₁₈ alcohol ethoxylate (e.g., isotridecanol ethoxylate) and (c) a tristyrenephenol ethoxylate as a surfactant (see, column 1, lines 35-52 of Vogt). All of Examples 1-8 of Vogt uses a combination of (a), (b) and (c) components. It is also disclosed in the Vogt reference that (d) calcium salt of alkylbenzene sulfonic acid can be additionally added (see column 2, lines 29-33 of Vogt). Thus, a combination of emulsifier of the present invention is patentably distinguishable from a combination of surfactant used in the Vogt reference.

As discussed above, the microemulsion of the present invention recited in claims 1-20 and 22-26 are inventive over Vogt. Moreover, the deficiencies of Vogt cannot be made up for by Flahive because Flahive still fails to disclose or suggest at least the claimed water content.

Therefore, the claimed microemulsion is not made obvious over the cited art individually or in combination.

Conclusion


In light of the above remarks, since the amended independent claim 1 of the present application is believed to overcome the 35 USC §§ 102(b) and 103(a) rejections, the dependent claims therefrom are also believed to address the same rejections. Therefore, the Examiner is respectfully requested to withdraw these rejections and allow the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie Reg. No. 42,874 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated:

Respectfully submitted,

By 
Craig A. McRobbie
Registration No.: 42,874
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant